

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE
2005 JAN 31 P 2:36

UNITED STATES OF AMERICA)
Petitioner)
V.)
ELLEN A. BIOTTI)
Respondent)

U.S. DISTRICT COURT
DISTRICT OF MASS.

M.B.D. No.
05 MBD 10061

**PETITION TO ENFORCE
INTERNAL REVENUE SERVICE SUMMONS**

The United States of America, on behalf of its agency, the Internal Revenue Service, and by its attorney, Michael Sullivan, United States Attorney for the District of Massachusetts, state that:

1. This proceeding for the enforcement of an Internal Revenue Service Summons is brought pursuant to sections 7402(b) and 7604(a) of the Internal Revenue Code of 1986, 26 U.S.C. sections 7402(b) and 7604(a).
2. Susan Samaha is a Revenue Officer of the Internal Revenue Service authorized to issue summonses under the Internal Revenue Laws.
3. The respondent, Ellen A. Biotti resides or is found at 15 Minuteman Lane, Wellesley, Massachusetts 02181 within the jurisdiction of this Court.
4. Section 6020(b) of the Internal Revenue Code of 1986, 26 U.S.C., authorizes the Secretary of the Treasury, acting by his agents and employees in the Internal Revenue Service, to make a return from his own knowledge and from such information as he can obtain through testimony or otherwise for a person who fails to file a return. For the purpose of making such a return, Section 7602 authorizes the Secretary to issue a Summons to the person to appear at a time and place named in the Summons, to produce such books, papers, records or other data, and to testify, as may be relevant or material to making the return.
5. On July 20, 2004, Revenue Officer Susan Samaha issued, pursuant to Section 7602 of the Internal Revenue Code of 1986, a summons to Ellen A. Biotti, directing her to appear before Revenue Officer Susan Samaha at 118 Turnpike Road Suite 100, Southborough, MA 01772 at 1:00 P.M. on August 25, 2004 and to produce for examination (and give testimony relating to) documents and financial records for the year(s) ending December 31, 2002 and December 31, 2003.

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A copy of the Summons is attached to this Petition as "Exhibit A". On July 20, 2004, Revenue Officer Susan Samaha served the Summons on Ellen A. Biotti by leaving an attested copy of the summons at the last and usual place of abode of the person to whom it was directed. Revenue Officer Susan Samaha signed a certification on the face of the copy of the Summons served that it is a true and correct copy of the original.

6. Ellen A. Biotti has complied with the Summons with respect to the years ending December 31, 2002, but has failed and refuses to comply with respect to the years ending December 31, 2003.

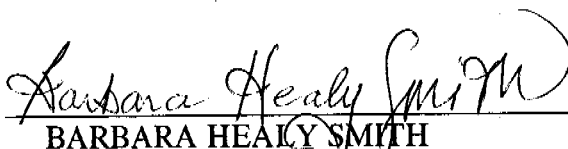
7. The records sought by the Summons are not now in the possession of the Internal Revenue Service, and their production by Ellen A. Biotti for examination by an officer of the Internal Revenue Service is necessary to make a federal income tax return (s) for the year(s) ending December 31, 2003.

WHEREFORE, the petitioners pray that:

1. Ellen A. Biotti be ordered to show cause, if any she has, why she should not obey the Summons;
2. Ellen A. Biotti be ordered to obey the Summons at a time and place to be fixed by Revenue Officer Susan Samaha or by any other officer of the Internal Revenue Service authorized to examine the records and take testimony; and
3. The cost of this action to be awarded to the United States.

By its attorney,

MICHAEL J. SULLIVAN
United States Attorney

By: 
BARBARA HEALY SMITH
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3282

Dated: JANUARY 31, 2005



Summons

In the matter of Ellen A Biotti, 15 Minuteman Lane, Wellesley, MA 02181Internal Revenue Service (Division): Small Business/Self EmployedIndustry/Area (name or number): Small Business/Self Employed Area: 21Periods 12/31/2002, 12/31/2003

The Commissioner of Internal Revenue

To Ellen A. BiottiAt 15 Minuteman Lane, Wellesley, MA 02181

You are hereby summoned and required to appear before Susan Samaha, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

All documents and records in your possession or control reflecting the receipt of taxable income by you for the year(s) 12/31/2002, 12/31/2003, including but not limited to: statement of wages for the year(s) 12/31/2002, 12/31/2003; statements regarding interest or dividend income for the year(s) 12/31/2002, 12/31/2003; employee earnings statements for the year(s) 12/31/2002, 12/31/2003; records of deposits to bank accounts during the year(s) 12/31/2002, 12/31/2003; and any and all other books, records, documents, and receipts regarding wages, salaries, tips, fees, commissions, and any other compensation for services (including gains from dealings in property, interest, rental, royalty and dividend income, alimony, annuities, income life insurance policies and endowment contracts, pensions, income from the discharge of indebtedness, distributive shares of partnership gross income, and income from an estate or trust), so that Federal Income Tax liability for the year(s) 12/31/2002, 12/31/2003 (for which year(s) no return have been made) may be determined.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

118 Turnpike Road Suite 100, Southboro, MA 01772 508-460-1387

Place and time for appearance at: 118 Turnpike Road Suite 100, Southboro, MA 01772

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 12-2001)
Catalog Number 21405Jon the 25th day of August, 2004 at 1:00 o'clock P m.Issued under authority of the Internal Revenue Code this 20th day of July, 2004
Signature of Issuing Officer

Revenue Officer

Title

Signature of Approving Officer (if applicable)

Title

Original -- to be kept by IRS



Service of Summons, Notice and Recordkeeper Certificates

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date

7/20/04

Time

3:42 PM

**How
Summons
Was
Served**

1. ☐

I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.

2. ☒

I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any): left in envelope in door handle

3. ☐

I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party recordkeeper within the meaning of § 7603(b). I sent the summons to the following address:

Signature

Susan Sarah

Title

Revenue Officer

4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine

whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.

Date of giving Notice: _____

Time: _____

Name of Noticee: _____

Address of Noticee (if mailed): _____

**How
Notice
Was
Given**

☐

I gave notice by certified or registered mail to the last known address of the noticee.

☐

I gave notice by handing it to the noticee.

☐

I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any).

☐

In the absence of a last known address of the noticee, I left the notice with the person summonsed.

☒

No notice is required.

Signature

Susan Sarah

Title

Revenue Officer

I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the noticee consents to the examination.

Signature

Susan Sarah

Title

Revenue Officer

Form 2039 (Rev. 12-2001)

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UNITED STATES OF AMERICA)
Petitioner)
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M.B.D. No.

05 MBD 10061

DECLARATION OF REVENUE OFFICER

I, Susan Samaha, declare:

1. I am a duly commissioned Revenue Officer employed in the Small Business/Self Employed Division of the Office of the Area Director of the Internal Revenue Service at 118 Turnpike Road Suite 100, Southborough, MA 01772. I make this declaration based on personal knowledge or information provided to me in the course of my employment.
2. In my capacity as a Revenue Officer, I am conducting an investigation to determine the tax liability of Ellen A. Biotti for the period(s) ending December 31, 2002 and December 31, 2003.
3. In furtherance of the above investigation and in accordance with 26 U.S.C. § 7602, I issued on July 20, 2004, an administrative summons to Ellen A. Biotti to give testimony and to produce documents as described in same summons. The summons is attached to the Petition as Exhibit A.
4. In accordance with 26 U.S.C. § 7603, on July 20, 2004, I served an attested copy of the Internal Revenue Service summons described in paragraph 3 above on the respondent. Ellen A. Biotti, by leaving an attested copy of the summons at the last and usual place of abode of the person to whom it was directed, as evident in the certificate of service on the reverse side of the summons.
5. On August 25, 2004, Ellen A. Biotti failed to comply with the

summons. The respondent's refusal to comply with the summons continues to the date of this Declaration.

6. The books, papers, records or other data sought by the summons are not already in possession of the Internal Revenue Service.

7. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.

8. It is necessary to obtain the testimony and to examine the books, papers, records or other data sought by the summons in order to determine the federal tax liability of Ellen A. Biotti for the period(s) ending December 31, 2003.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 15th day of November, 2004


Susan Samaha
Revenue Officer